

(b) In situations under sub. (3) (a), by the senior staff member present at the time and place; and

(c) In all situations under sub. (4), by the superintendent or deputy superintendent, or, if neither is present at the institution, the security director or, if that person is not available, the assistant superintendent on call or in charge of the institution.

(10) APPLICATION. Chemical agents may be employed only by a trained supervisor or staff member. When a chemical agent is used in a situation under sub. (4), the use shall be under the immediate supervision of a supervisor. Each institution shall ensure that every staff member authorized to use chemical agents is properly trained in their use.

(11) MEDICAL ATTENTION AND CLEAN-UP. As soon as possible after a chemical agent has been used, all inmates who have been exposed to the chemical shall be examined by the medical staff. These inmates shall have their eyes cleaned with water and be provided with a change of clothing. Exposed living quarters shall have bedding and mattresses changed and shall be thoroughly cleaned. Whenever CS is used, exposed inmates shall be offered an opportunity to shower.

(12) INCIDENT REPORT. As soon as possible following the use of a chemical agent, an incident report shall be submitted to the director of the division's bureau of adult institutions. The incident report shall be as thorough as possible, describing:

(a) The problem leading to the use of the chemical agent;

(b) The steps taken prior to the use of the chemical agent;

(c) Why those steps were inadequate; and

(d) Measures taken following the use of the chemical agent.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; r. and rec. October, 1984, No. 346, eff. 11-1-84.

HSS 306.09 Mechanical restraints for transportation of inmates. (1) DEFINITION. In this section "mechanical restraint" means a commercially manufactured device applied to an inmate to restrain or impede the free movement of the inmate's arms or legs. Mechanical restraints include but are not limited to handcuffs with restraining belt or chain, restraining chains, leg restraints, and leather and plastic restraints.

(2) MOVEMENT WITHIN INSTITUTION. Mechanical restraints may be used in the following situations if the superintendent or his or her designee determines that the use of mechanical restraints is necessary to protect staff or other inmates or to maintain the security of the institution:

(a) In transporting an inmate from within the institution to outside the institution;

(b) In transporting an inmate to segregation or TLU status; and

(c) For an inmate who is in segregation or TLU status, while the inmate is outside his or her cell.

(3) **MOVEMENT OUTSIDE INSTITUTION.** Commercially manufactured mechanical restraints may be used in transporting an inmate outside an institution, in accordance with s. HSS 302.12.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; emerg. r. and recr. eff. 11-18-85; r. and recr. Register, May, 1986, No. 365, eff. 6-1-86.

HSS 306.10 Use of mechanical restraints to immobilize inmates. (1) Mechanical restraints to confine inmates to their beds may be used only in the following circumstances:

(a) To protect correctional staff and inmates from an inmate who poses an immediate risk of physical injury to others unless restrained; and

(b) To protect an inmate who poses an immediate threat of physical injury to himself or herself unless restrained. An inmate may be placed in restraints only with the express authorization of the shift supervisor.

(2) Mechanical restraints shall never be used:

(a) As a method of punishment;

(b) About the head or neck of the inmate;

(c) In a way that causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the inmate.

(3) When an inmate is placed in restraints, the following procedure shall be followed:

(a) The shift supervisor shall so notify the clinical services unit supervisor, the crisis intervention worker, or the licensed clinician on call, and a member of the medical staff. They shall interview the inmate and arrange for a physical and mental examination as soon as possible. They shall recommend to the superintendent, based on their interview and the examinations, whether the inmate should remain in restraints. If the superintendent approves the recommendation, it shall be followed. If not, he shall, as soon as possible, refer the issue to the directors of the bureaus of institutions and clinical services, who shall decide whether the inmate shall remain in restraints.

(b) A correctional staff member shall observe any inmate in restraints every 15 minutes.

(c) If possible, inmates should be released from restraints to perform bodily functions and for meals. Three staff members, one of whom shall be a security supervisor, must be present before such release may occur.

(d) A record must be kept of persons placed in restraints and it shall include:

1. The inmate's full name, number, and date;

2. The names of the staff members and supervisor present when the inmate was placed in restraints;

3. The reasons for placing the person in restraints;

4. The times that the inmate was checked, the name of the person making the check, and comments on the individual's behavior while in restraints;

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5. The times the inmate was placed in restraints and removed;
6. Medication given; and
7. The names of staff visitors, the times of their visits, and any written comments they make.

(e) No inmate shall remain in restraints for longer than 12 hours, unless the inmate is examined by a licensed psychologist or psychiatrist or the crisis intervention worker, who shall make a recommendation to the superintendent as to whether the person should remain in restraints. Such an examination shall occur at least every 12 hours an inmate is in restraints.

(4) Institutions shall maintain a supply of restraining devices which shall be periodically examined. Any excessively worn or defective restraint devices shall be removed from the supply. Only commercially manufactured restraining devices may be used.

History: Cr. Register, August, 1980, No. 296, eff. 9-1-80; correction in (3)(a) made under s. 13.93 (2m) (b) 6, Stats, Register, April, 1985, No. 352.

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firearms ought not be carried by staff who have contact with inmates. In view of the danger created by firearms and their minimal benefit, only the superintendent is permitted to authorize the issuance of firearms. Typically, the person who is in charge of the institution when the superintendent is not there will also have this authority. This subsection follows the recommendations of ABA at 555.

Sub. (4) indicates the nature of the weapons training and qualification program staff must complete to be certified to be issued weapons. It is important the staff who have weapons know how to use them. This greatly increases the chances that they will be used responsibly and diminishes the chances for accidents or negligent handling of them. Moreover, there is a great need for training in human relations and alternatives to force. This training should be part of weapons training.

To insure that weapons are handled responsibly, sub. (5) indicates the procedure to be followed before discharging a weapon. It will not always be possible, given the nature of the situations in which firearms are used, to follow this procedure. However, it is required that it be followed unless it is not feasible to do so. For example, if it becomes necessary to shoot at a person holding a hostage, the procedure might not be followed.

The procedure is designed to verbally inform the inmate that a staff member possesses a weapon and that the inmate should stop the activity. An adequate verbal warning to a person attempting to escape would be to say, "Halt, don't move! I have a weapon." If the verbal warning is disregarded and the inmate does not halt, a warning shot should be fired. If this is disregarded, it might be necessary to fire shots at the inmate. Such shots should be fired to stop the activity and, if possible, not to kill or cause great bodily harm. There may be situations in which it is necessary to shoot to kill. This is provided for in sub. (6) by the phrase "if the inmates activity poses an immediate threat of death or great bodily harm to another." In such case, shooting with the intention of causing death or great bodily harm would be justified and is authorized by the rule.

Sub. (7) requires the investigation of incidents in which a weapon is discharged. This investigation is for the purpose of administrative review and is not intended to take the place of an investigation conducted by another government agency.

Subsections (7) (a)-(c) provide for investigation and reporting through the normal chain of command. Sub. (7) (d) and (e) provide for investigation and reporting by a special panel when anyone is killed or wounded by a firearm discharge. Because of the seriousness of such an event, it is desirable to include on the panel people from outside the division of corrections to insure that the investigation is conducted with the necessary objectivity.

No attempt is made in the rule to identify those sanctions that may or shall be applied to staff members who violate the rules. Clearly, the civil and criminal law of the state applies. A current issue in administrative law is whether the violation of a rule is the basis for a cause of action in tort or under 42 U.S.C. s. 1983. These are matters for the legislature and the Congress. What administrative sanction may be applied is addressed elsewhere in these rules.

Note: HSS 306.08. HSS 306.08 authorizes and regulates the use of chemical agents in adult correctional institutions.

The division's policy is to allow use of chemical agents in emergencies, and to ensure that in nonemergency situations chemical agents are used only as a last resort and not as alternatives to communication with an inmate or to other types of non-deadly force. The rule also makes clear that chemical agents may not be used to punish an inmate but only to control him or her when necessary.

As stated in sub. (2), the use of chemical agents is regulated by this section. Because chemical agents pose a risk of injury to others, they may only be used in limited situations.

Subsection (3) identifies emergency situations in which chemical agents may be used without going through the steps identified in sub. (4). Under this subsection, chemical agents may be used to regain control of an institution or part of an institution over which physical control has been lost during an emergency, HSS 306.23 (1), or disturbance, HSS 306.22 (1). "Part of an institution" may be a building or a small area like a room. Whether a chemical agent should be used in such a situation depends upon whether using the chemical agent is less hazardous for both the person seeking to use the chemical agent and the inmate than using other reasonable means to accomplish the purpose. As explained in HSS 306.06 (5) (b), an inmate's simple refusal to follow an order does not constitute loss of control of all or part of an institution.

Subsection (4) covers use of chemical agents in nonemergency situations, including situations in which an inmate refuses to follow an ordinary order. These situations include, for example, an inmate's refusal to take nonemergency medication or submit to nonemergency medical treatment; refusal to return a meal tray or tray inserts, unless the tray or insert is presently being used as a weapon; an inmate's throwing objects or liquids from the cell, unless

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such activity constitutes an immediate threat of bodily injury or death to him or herself or another; refusal to be strip searched; refusal to come to bars of a cell to be handcuffed for any nonemergency reason; and yelling or shouting.

Subsections (4) (b) 1 to 6 outline a series of steps to be taken before using the chemical agents in nonemergency situations, when it is feasible to take those steps. This procedure is designed to ensure that chemical agents are used only as needed in particular situations. The person seeking to use the chemical agent should communicate with the inmate and should ask other available personnel to communicate with the inmate to persuade the inmate to take the desired action or comply with an order. When communicating with an inmate, staff members should take into consideration an inmate's special needs, including, but not limited to, an inmate's inability to understand English. Waiting or reconsidering the propriety of an order may be possible in some cases. Other solutions may be appropriate in other situations.

Except in situations in which the staff member seeking to use chemical agents knows that the inmate has a history of violent behavior and reasonably believes that the inmate will become violent in the present situation, chemical agents may only be used after an inmate physically threatens to use immediate physical force. Physical force includes possession of a weapon, such as a knife. Verbal threats do not constitute a sufficient threat. When the staff member knows that the inmate has a history of violent behavior and reasonably believes that the inmate will become violent in the present situation, the staff member must follow all steps in the procedure in sub. (4) (b) 1 and 4 but may use chemical agents before using actual physical power and strength.

Subsection (5) (a) states that chemical agents may not be used when they clearly would have no effect. Situations include instances when the inmate has thrown a blanket over his or her head, when the chemical agent cannot effectively be used according to the manufacturer's instructions to produce the desired result, or when a particular inmate is known not to react to the chemical agent.

Subsection (5) (b) clarifies the division's policy that an inmate's simple refusal to follow an order does not justify using chemical agents unless the inmate physically threatens to use immediate physical force.

Subsections (7) and (8) regulate the use of particular chemical agents. CN and CS agents are the only agents to be used in enclosed areas, because enclosed areas require the use of agents which can be released in small amounts and can be carefully controlled. This method of use further avoids unnecessary risks of injury. The manufacturer's safety instructions include guidance as to the distance from which the agent should be delivered as well as the date after which the agent must be replaced.

The use of agents identified in sub. (8) is confined to areas where the risk to life by a reduction in the oxygen available is minimal, for example, in open areas and in rooms such as the dining halls at most institutions.

Because use of chemical agents creates risks, sub. (9) imposes severe limitations on who may authorize their use. In emergency situations described in sub. (3) (b) and (c), the superintendent or designee may authorize the use of chemical agents although, to prevent an imminent escape, described in (9) (b), it may be necessary for the senior staff member present to authorize use of a chemical agent. In non-emergency situations, only the person actually in charge of the institution at the given time—who may be the superintendent or deputy superintendent, the security director, or an assistant superintendent—may authorize the use of chemical agents.

As provided in sub. (10), when chemical agents are used, only trained supervisory personnel may use them, except that a trained staff member may use them under immediate supervision. These requirements and the training requirements are to ensure that chemical agents are used only when necessary and in a way that minimizes the risk to staff and inmates.

Subsection (11) requires a medical examination and change of clothes and bedding and cleaning for exposed inmates and areas. Inmates exposed to CS must be given a chance to shower. "Exposed inmates" are not just those against whom the agent is used but those exposed to it because they are nearby. Medical examinations and cleaning minimize the risk of permanent injury, and a change of clothes and bedding minimizes risks to the health of inmates from the residue of chemical agents as well as the discomfort they may cause.

The reporting requirement in sub. (12) ensures adequate administrative notification and review of the use of chemical agents.